



WEB COPY

W.P.No.35790 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.35790 of 2019
and
W.M.P.No.36685 of 2019

Mohammed Janullah Sheriff

... Petitioner

Vs.

1.The Custodian of Enemy Property for India,
Kaisar I Hind Building, Currimbhoy Road,
Opp.Bharat Bhavan,
Ballard Estate,
Mumbai – 400 001.

2.The District Collector,
Chennai District,
Singaravelar Maaligai,
Rajaji Salai,
Chennai – 1.

3.The Tahsildar,
Perambur Taluk,
Perambur,
Chennai – 600 011.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, call for the entire records connected with the



WEB COPY

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impugned notice in Form-4 (under Rule 4(3) of the Enemy Property Rules 2015) dated 25.01.2019 issued by the 2nd respondent and quash the same.

For Petitioner	: Mr.K.Thilageswaran
For R1	: Mr.T.V.Krishnamachari Senior Panel Counsel
For R2 & R3	: Mr.G.Ameedius Government Advocate

ORDER

The Form-4 notice issued by the District Collector, Chennai under Rule 4(3) of the Enemy Property Rules, 2015 dated 25.01.2019 is sought to be quashed in the present writ petition.

2. The learned counsel for the petitioner would submit that the property, namely, House and Ground bearing Door No.12, 12-A at Thiruvengadasamy Street, Perambur Barracks, Chennai – 600 012 corresponding to Re-Survey (RS) No.165/5 and house site bearing No.R.S.No.165/6 measuring about one ground and 2163 Square feet has been sold by way of Certificate of Sale dated 14.07.1955 by the Competent Officer, Evacuee Interest (separation) Act, Madras and Andhra State through a public auction to the elder sister of the petitioner named Mrs.Sarifa Bi W/o S.A.Sattar.



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3. Further, he would submit that having purchased the said property by way of Certificate of Sale, the elder sister of the petitioner was in continuous possession and enjoyment of the property and by way of Registered Deed of Settlement bearing Document No.2552 of 1956, the subject property was settled in favour of the elder brother of the petitioner named Mr.M.I.Abdul Wahab Sheriff. Since the elder brother of the petitioner was died and his wife predeceased and they did not have any children, the subjection property was devolved to the petitioner and his elder sisters and his younger brother. Since they they were in the possession and enjoyment of the subject property.

4. After several years, the petitioner received the impugned notice dated 25.01.2019 issued by the District Collector, Chennai under Rule 4(3) of the Enemy Property Rules 2015, stating that the subject property under the occupation of the petitioner is an enemy property under the provisions of the Enemy Property Act, 1968 and therefore, the property vested in the Custodian under Sections 5, 5A and 12 of the Enemy Property Act, 1968 and the Enemy Property Rules, 2015.



5. Further, it is contended that the impugned notice was issued without jurisdiction and erroneous invocation of the provisions of the Enemy Property Act and Rules and therefore, the said notice is liable to be set aside.

6. Further, it is submitted that the Certificate of Sale issued by the Competent Officer was issued in Claim No.176 of Madras. The Certificate states that Mrs.Sharifa Bi, Wife of S.A.Sathar residing at No.25, Mangapathy Naicken Street, Strahans Road, Madras declared the purchase by public auction on 14.06.1955 of the property mentioned in the schedule for a sum of Rs.8,250/- held in pursuance of the powers conferred upon the Competent Officer under Section 10 of the Evacuee Interest (Seperation) Act 1951 (LXIV of 1951) and the rules made thereunder.

7. Further, the Sale Certificate issued by the Competent Officer was verified by the District Collector, Chennai. The Counter filed by the District Collector would reveal that File No.R.Dis.6323 of 1956 traced out from the Collectorate Record Section for the subject land sold at the public auction and the Judgment before the Competent Officer Evacuee Interest (Seperation) Madras and Andhra States in the year 1955 for evacuees 1) Abdul Gafoor



Khan 2) Mahaboob Bi, 3) Kareem Baksh and 4) Sahira Bi dated 15.04.1955.

The said Sahira Bi is the elder sister of the writ petitioner.

WEB COPY

8. Since the sanctity of the Sale Certificate has already been verified by the District Collector, Chennai and on verification of record, it is found that the subject property was auctioned by the Competent Officer, of Madras and Andhra Pradesh under the provisions of Evacuee Interest (Separation) Act, 1951, the notice issued by the District Collector under the Enemy Property Act, 1968, without jurisdiction, would amount to unnecessary interference in to the property right of the petitioner. Thus, the writ petitioner is entitled to succeed. Consequently, the impugned notice issued in Form-4 under Rule 4(3) of Enemy Property Rules, 2015 dated 25.01.2019 is quashed.

Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

09.01.2024

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Index : Yes / No

Speaking order / Non-Speaking Order

Neutral Citation : Yes / No



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WEB COPY

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S.M.SUBRAMANIAM, J.

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W.P.No.35790 of 2019

09.01.2024
(2/2)